



STATE OF WEST VIRGINIA
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EARL RAY TOMBLIN
GOVERNOR

March 18, 2015

VIA HAND DELIVERY

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

Re: Enrolled House Bill No. 2880

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill No. 2880.

This bill is well-intentioned, and I commend the Legislature for tackling West Virginia's opioid addiction predicament by establishing two new drug treatment pilot programs. However, the bill contains certain issues that should be corrected before it becomes law.

From a technical perspective, the bill's title appears to be defective in that it is vague and only references one of the two pilot programs the bill establishes. The title also fails to note that this new article of the West Virginia Code [§ 62-15A-1, *et seq.*] sets forth definitions and mandates the preparation of a report.

Two additional technical flaws appear on the bill's page 2. The word "opioid" is spelled incorrectly on line 4, and the cross reference in lines 6-7 is erroneous.

Further, I have a substantive concern about this bill. Specifically, I believe the Legislature's delegation of certain executive functions to the Supreme Court of Appeals of West Virginia (*e.g.*, requesting the Court to provide addiction treatment services) may violate the separation of powers doctrine. *See* Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 279 S.E.2d 622 (W. Va. 1981) ("Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed.").

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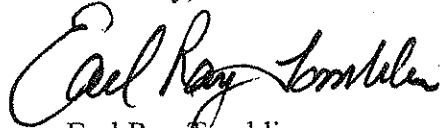
Speaker Armstead
March 18, 2015
Page 2

This issue can be remedied if the bill is amended to provide that the executive branch Department of Health and Human Resources ("DHHR") and its Bureau for Behavioral Health and Health Facilities ("BBHBF") administer the addiction treatment services outlined in the two pilot programs at issue. DHHR and BBHBF can administer these services working collaboratively with the Court and the Division of Corrections ("DOC").

Notably, DHHR and BBHBF already administer addiction treatment services for the DOC, and DHHR and BBHBF are experts in determining eligibility for Medicaid and other health benefit programs. It makes the most sense for DHHR and BBHBF, rather than the Court and the DOC, to administer the addiction treatment services outlined in the bill.

I urge the Legislature to make the foregoing amendments to Enrolled House Bill No. 2880 today, and to return the bill to my desk for signature.

Sincerely,

A handwritten signature in black ink, reading "Earl Ray Tomblin". The signature is fluid and cursive, with the first name "Earl" being the most prominent.

Earl Ray Tomblin
Governor

cc: The Hon. William P. Cole, III
President of the Senate

The Hon. Natalie E. Tennant
Secretary of State